STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois, Petitioner Rate MAP-P Modernization Action Plan - Pricing Filing	))))))	Docket No. 12-0001

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

James V. Olivero
Michael J. Lannon
Nicole T. Luckey
Matthew L. Harvey
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jolivero@icc.illinois.gov
mlannon@icc.illinois.gov
nluckey@icc.illinois.gov
mharvey@icc.illinois.gov

Counsel for Staff of the
Illinois Commerce Commission

July 25, 2012

TABLE OF CONTENTS

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois, Petitioner Rate MAP-P Modernization Action Plan - Pricing Filing	))))))	Docket No. 12-0001

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

NOW COME the Staff witnesses of the Illinois Commerce Commission ("Staff"), by and through their undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's Rules of Practice (83 Ill. Adm. Code 200.800), and respectfully submit their Reply Brief in the instant proceeding.

I. INTRODUCTION

A. Procedural History

In this proceeding, the Commission is investigating the performance-based formula rate tariff, Rate MAP-P Modernization Action Plan – Pricing Tariff ("Rate MAP-P") filed on January 3, 2012, by the Ameren Illinois Company d/b/a Ameren Illinois (collectively, "Ameren," "AIC," or "Company")

Initial Briefs ("IB") were filed on July 10, 2012 by the People of the State of Illinois *ex rel.* Lisa Madigan, Attorney General of the State of Illinois (the "AG") and the AARP ("AARP"); the Citizens Utility Board ("CUB"); the Illinois Industrial Energy Consumers ("IIEC"); the Commercial Group ("CG"); Staff; and Ameren Illinois Company d/b/a Ameren Illinois (collectively, "Ameren," "AIC," or "Company"). Some of the issues raised in the parties' initial briefs were addressed in Staff's Initial Brief and, in the interest of avoiding unnecessary duplication, Staff has not repeated every argument or response previously made in Staff's Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff's Initial Brief.

B. Legal Framework and Standards

C. Participation in EIMA/Formula Rates without AMI Plan Approval

II. RATE BASE

A. Overview

B. Uncontested or Resolved Issues

1. Gross Plant in Service (except for C.8)

2. Accumulated Depreciation

3. Plant Held for Future Use

4. ADIT – Deferred Compensation

5. Materials and Supplies

6. Cash Working Capital – Employee Benefits/Payroll Lead

7. Customer Advances

8. Customer Deposits

9. OPEB Liability

C. Contested Issues

1. Cash Working Capital

a. Pass-Through Taxes Revenue Lag

Staff recommends that the Commission not allow a revenue lag for pass-through taxes. While the Company notes that Staff's proposal was rejected in the Company's most recent gas rate case (AIC IB, p. 10), it conveniently omits that the Commission accepted Staff's position in the Company's most recent electric rate case (Docket Nos. 09-0306/0307/0308, Order, April 29, 2010, p. 54) and in the only other formula rate case that has come before the Commission (ComEd, Docket No. 11-0721, Order, May 29, 2012, p. 45).

The Company attempts to pass off Staff's assertion that the Company is remitting the pass-through taxes earlier than it is statutorily required as only a conceptual argument. (AIC IB, p. 10) The dates on which pass-through taxes are due to the taxing authorities are not conceptual: the dates are very real and plainly set forth in statue or rule. The dates when the Company collects pass-through taxes are clearly defined by the Company. The Company has made a business decision to remit pass-through taxes earlier than required and wishes ratepayers to finance the additional costs incurred as a result of the Company's decision.

The Company claims that Staff's recommendation regarding Municipal Utility Tax ("MUT") is unsupported because filing instructions were not discussed. (AIC IB, p. 11) In Staff Exhibit 14.0, however, Staff Witness Kahle provided testimony regarding MUT being due on the last day of the month for the preceding month. (Staff Ex. 14.0, p. 4) This testimony is uncontested—the Company did not refute this filing instruction in surrebuttal testimony.

b. Revenue Collection Lag

c. Income Tax Lead and Lag

d. Vacation Pay

2. ADIT – FIN 48

As pointed out by the IIEC, Ameren itself acknowledges that FIN 48 is an issue of ratemaking policy and fairness, rather than a debate about the facts. (IIEC IB, p. 35) The IIEC correctly points out that Ameren's view of fairness is that it be protected against any loss of "the return it would have earned had it not taken the uncertain tax deductions". (*Id.*) This contrasts to the ratepayers' perspective on fairness. (*Id.*, p. 36) Ameren's proposal shields itself from all risk by transferring it to the ratepayer. (*Id.*)

The Company argues that if a utility never asserts its uncertain tax positions, the incremental rate base deduction arising from the potential re-characterization of FIN 48 to ADIT cannot happen; consequently, it is in the customers' best interests for the Commission to encourage the Company to take prudent, educated, and informed tax positions. (Ameren IB, p. 22) This argument fails on several points. First, the Company files taxes as part of a consolidated group, with many competing interests in determining the tax positions that the consolidated group should take. (Tr., June 21, 2012, pp. 255-256) In other words, Illinois ratemaking is but one piece of a large tax puzzle to be assembled by Ameren Corporation. Next, the record reflects that Ameren's revenue requirement employs the statutory tax rate; therefore, this reduction in actual tax expense to the Company does not automatically flow to ratepayers. (Tr., June 21, 2012, pp. 245-246) Further, the Company relies on the fact that its experts have determined that it is more likely than not it will eventually lose these uncertain tax positions. (Ameren IB, p. 20) Yet, the Company knows now *for certain* that a significant portion of the amounts identified by the Company as FIN 48 ADIT will *not* have to be paid. (AG/AARP IB, pp. 37-38) Ameren's position belies this fact. Its position is designed to protect the Company from all risk rather than being in the customers "best interests".

CUB properly points out that Ameren's formula rate plan should be based on the use of accounting information that complies with the FERC USOA as reported on the Company's FERC Form 1. (CUB IB, p. 17) CUB, as well as Staff, discusses the FERC guidance directly on point on this issue. (CUB IB, pp. 17-18; Staff IB, pp. 9-10) Rather than address such relevant guidance, the Company discusses orders from two non-Illinois state commissions, citing to these documents as dispositive on this issue. (Ameren IB, pp. 23-24) The complete facts of those cases are not known to this Commission; what is known, however, is that the cases involved utilities which were not subject to automatic formula rates based upon the FERC USOA, with a reconciliation process to make them whole (see AG/AAPR IB pp. 36-37). Indeed, the Company acknowledges that "formula ratemaking is different [than traditional ratemaking]…" (Ameren IB, p. 27) The Company has not and cannot justify ignoring the FERC guidance directly on point. For all the foregoing reasons, including those reasons set forth in Staff's and Intervenor IBs, the Commission should adopt the FIN 48 adjustment.

3. ADIT – Projected Additions

In accordance with sound ratemaking principles and consistency with the ComEd order in Docket No. 11-0721, Staff, AG/AARP, CUB, and IIEC all recommend adjustments to the balance of ADIT to reflect the estimated ADIT that will be generated by 2011 and 2012 plant additions. The Company criticizes these parties' estimates as not being transparent information reflecting actual costs, stating rather that these estimates "propose to establish rates based on speculation about what they think the balance of ADIT may be in the future." (Ameren IB, p. 26) While the adjustments do differ to some degree, none equal zero which is the nonsensical number the Company endorses. Further, the Company ignores the ComEd ruling on this issue, even though the facts are identical. The Company's own brief, on another issue, states that "In its Final Order in Docket No. 11-0721, the Commission rejected the same proposal from IIEC to use average rate base on an initial basis. Mr. Gorman has not explained why the record in this case warrants a different result." (Ameren IB, p. 40, (internal cite omitted)) Here, the Company has not explained why the record in this case warrants any different conclusion on the ADIT-Projected Additions issue as the Commission found in its Final Order in Docket No. 11-0721 for ComEd. Accordingly, the Commission should adopt the adjustment to ADIT-Projected Plant Additions.

4. Accrued Vacation Pay as Operating Reserve

Staff maintains its position that the liability for accrued vacation pay recorded on AIC's books represents a source of non-investor supplied capital that should be treated as an operating reserve and deducted from Rate Base. (Staff IB, p. 11) The Company's claim that AIC's customers have not financed any 2010 accrued vacation expense prior to the Commission's issuance of an order in this proceeding and the collection in rates of 2010 payroll expense (AIC IB, pp. 30-31) is simply an attempt to divert attention from the fact that, every year, the Company collects funds from its customers for future expenses; i.e., vacation pay accrual takes place in advance of payment. (Staff IB, p. 12; Tr., June 21, 2012, p. 455) The Company is not "behind on cash collections" (AIC IB, p. 31) until an order in the case is entered; rather, it collects funds continually.

The Company points out that parties can identify only one prior instance where the Commission has deducted the accrued vacation liability balance from rate base – the recent ComEd formula rate proceeding. (AIC IB, p. 32) Staff would counter by pointing out that the Company did not identify any past instances where a recommendation to reduce a utility's rate base for accrued vacation liability was rejected by the Commission. Further, Staff is not aware of any differences between the facts regarding accrued vacation pay from the Commonwealth Edison docket as opposed to the Ameren docket that would warrant a different regulatory treatment. (Staff IB, p. 13) The Commission should adopt the AG/AARP adjustment to treat the Company's liability for accrued vacation pay as an operating reserve and deduct it from Rate Base. (*Id*.)

5. Account 190 Asset – Unamortized ITCs

The Company Initial Brief references Staff rebuttal testimony as support that the AG/AARP adjustment should not be accepted. (Ameren IB, pp. 34-35) However, Staff's position in its rebuttal testimony was formed without reviewing the AG/AARP rebuttal testimony, additional Company responses to Staff data requests on the issue, the Company's surrebuttal testimony, or the cross examination of the Company on the issue. Thus, Staff's IB reflects Staff's revised assessment of the issue.

One significant item of record evidence received subsequent to rebuttal testimony is that the Company admits that it has not previously included its unamortized ITC deferred tax asset in rate base, despite reducing income tax expense for amortization in its last general rate case. (Staff IB, p. 13) Therefore, the Company's position in this case on this issue is not consistent with prior Ameren cases and has not been previously approved by the Commission.

Parties agree that the Company has reflected the amortization of ITCs as a credit, or reduction, to income tax expense in this case. Since the Company has elected to reduce income tax expense for the amortization of the ITCs, the Internal Revenue Code prohibits the reduction of rate base by the unamortized ITC balance. (CUB IB, p. 23) However, the Company claims that the Internal Revenue Code does not prohibit the rate base from being increased by the deferred tax asset associated with the unamortized ITC balance. (AIC Ex. 23.0, p. 17) The Company argues that the adjustment proposed by the Intervenors and adopted by Staff to remove the deferred tax asset included in ADIT from rate base would "check all of the above" and use both options available for proper ratemaking treatment of ITCs. (Ameren IB, p. 35) The Company's logic appears to be that, since no credit is deducted from rate base, then the deferred tax debit or asset balance that arises directly from that deferred investment tax credit should be added to rate base. (AG/AARP IB, p. 45) Ameren either misunderstands or misrepresents the options discussed initially by CUB. (Ameren IB, p. 35 and CUB IB, p. 23)

The Company is incorrect when it states that Mr. Smith's adjustment assumes that the unamortized ITC balance is already part of rate base. "The balance cannot be removed from rate base unless it is there to begin with." (Ameren IB, p. 35) It is not this amount (unamortized ITC) which Staff and Intervenors advocate be “removed” but, rather, the corresponding deferred tax asset arising from the ITCs should not be “added in” to rate base since the unamortized ITCs are not deducted from rate base.

Should the Commission disagree with the Intervenor’s adjustment, it would be necessary to change Appendix A from the Staff IB in order to reflect Ameren’s revised jurisdictional ADIT. (Ameren IB, p. 33, footnote 7) Therefore, if the Commission agrees with the Company, the adjustment in column (f), page 4 of Appendix A, of Staff’s IB would need to be changed from ($3,422) to ($1,369)[1]. The difference between these figures ($2,053) reflects the requested jurisdictional ADIT for ITCs as revised in Ameren’s IB that would remain in rate base.

6. Account 190 Asset – Step-Up Basis Metro

Staff finds that Ameren is correct that Mr. Effron focused on the debit entry to Account 190 for the transaction and did not address Ameren’s argument that the debit entry was offset by the credit entry to Account 190 for the transaction in his rebuttal testimony. (Ameren IB, p. 37) Without evidence that the Company’s argument is invalid, the Commission should reject the AG/AARP adjustment to remove a deferred tax asset recorded at the time of Central Illinois Public Service Company’s purchase of certain depreciable assets from Union Electric.

7. CWIP Not Subject to AFUDC

In direct testimony, both Staff and AG/AARP proposed different adjustments to CWIP Not Subject to AFUDC. Staff removed all projects that were present in both

[1] In thousands.

CWIP and plant additions. The AG/AARP removed its calculation of accounts payable associated with CWIP Not Subject to AFUDC, and did not address the double-counting issue that Staff addressed. Ameren accepted the Staff adjustment to remove the plant that was double counted in both CWIP and plant additions. However, the AG/AARP maintains that the Company's revised CWIP Not Subject to AFUDC, net of the Staff adjustment, still includes accounts payable associated with CWIP for one project. (AG/AARP Ex. 3.1. p. 7)

Staff has reviewed the record further and finds it supports the additional AG/AARP adjustment. In AG/AARP Ex 3.1 Revised, p. 7, Mr. Brosch disallowed the accounts payable associated with project 28082 based on Ameren's response to DR AG 8.04. The footnote to AG/AARP Ex. 3.1Revised states that Ameren's DR response admits that this project had unpaid payable at year-end. Unpaid payables represent amounts paid by vendors, rather than shareholders, therefore, no return is necessary on such capital. (AG/AARP Ex. 3.0, p. 33) Therefore, Staff recommends the Commission adopt the AG/AARP adjustment. Appendix A from Staff's IB should be updated to reflect an additional rate base disallowance of ($149).[2]

8. Average Rate Base – Projected Plant/ADR/ADIT

The IIEC maintains that the Commission should be consistent and use an average rate base for both setting initial rates and later reconciliation of those rates. (IIEC IB, p. 69) However, no further argument is provided to specifically support its proposal for the average for initial rates that all other parties oppose. The Commercial Group echoes the consistency argument, stating that using an average projected year

[2] In thousands. AG/AARP Ex 3.1 Revised, p. 7.

to set the initial rates makes most logical sense since that mirrors its recommendation to use an average rate base for the reconciliation. (CG IB, p. 3) However, the Commercial Group concedes that the Commission's order in ComEd was not unreasonable. (*Id.*, p. 4) The Company is correct that the Commission rejected IIEC's same proposal in ComEd. (Ameren IB, p. 40) Neither IIEC nor CG provide a reason for the Commission to conclude differently here.

9. Other

III. OPERATING EXPENSES

A. Overview

B. Uncontested or Resolved Issues

1. Adjustment for Athletic Ticket/Event Expenses

2. Adjustment for Contributions to Political Groups/Quincy Gems

3. Adjustment for EEI Memberships Dues Allocated to Lobbying

4. Correction for Previously Disallowed Depreciation Expense

C. Contested Issues

1. Section 9-227 Donations/Charitable Contributions

Staff recommends that the Commission accept Staff's proposed adjustment to remove from the Company's revenue requirement donations made to non-charitable organizations supposedly for the public welfare and donations made which do not meet the criteria established in Section 9-227 of the Act.

The Company's Initial Brief misrepresents both Staff's position and the order in Docket No. 11-0721 in supporting its position. First, the Company distorts Staff's position in asserting that Staff's "narrow reading of 'charitable' would presumably prohibit the recovery of donations to local schools and governments that do not qualify for this particular tax exemption." (AIC IB, p. 44) Staff recommends that the Section 501(c)(3) filter should be applied to donations made for the "public welfare." The purpose of donations made for charitable scientific, religious, or educational purposes are more easily identified and therefore the Section 501(c)(3) filter is unnecessary for such categories of contributions. In other words, Staff's recommendation does not prohibit charitable contributions to local schools as the Company alleges. However, since the term "public welfare" is not defined in the Act, and is not as obvious as are the terms scientific, religious, and educational, in the recent Order in Docket No. 11-0721, the Commission states that "a strict interpretation of the statute helps to ensure a more reasonable level of contributions is recovered from ratepayers." (Docket No. 11-0721, Final Order, p. 98) Staff has applied the Section 501(c)(3) filter on donations made for the "public welfare" to ensure that the mission of the recipient organization has met the requirements of the IRS to be considered a charitable organization.

Next, the Company argues that the community and economic development organizations that Staff seeks to disallow are Section 501(c)(6) tax exempt organizations that also receive donations. (AIC IB, p. 44) It is important to note that Section 501(c)(3) organizations are restricted in how much political and legislative lobbying activities they may conduct. However, a Section 501(c)(6) organization may further its exempt purposes by lobbying as its sole activity without jeopardizing its exempt status. Therefore, the tax exempt status of Section 501(c)(6) organizations is different than those of Section 501(c)(3), and there is no basis in the record to assume that the 501(c)(6) community and economic development organizations conduct themselves under the restrictions of the Section 501(c)(3) organizations. The Company relies on Docket No. 11-0721 as support that community and economic development organization contributions are recoverable. (AIC IB, pp. 43-44) Yet, it is clear from the minutes of the Commission's meeting in which the Order in Docket No. 11-0721 was entered that the allowance of such costs in rates was made under the assumption that the organizations in question were Section 501(c)(3) organizations. (Staff IB, p. 17)

For the reasons stated above, the Commission should not give any weight to the Company's arguments and accept Staff's adjustment.

2. Account 909 – Advertising Expense

a. Signage Costs

Staff proposes to disallow costs associated with signage that represent a duplicative expense resulting from the Company's decision to merge its legacy utilities. (Staff IB, p. 18-19)) The Company has stated that, "The Commission should not condone the use of obsolete and dated signage." (AIC IB, p. 47) However, it was the Company's own decision to merge the legacy utilities that caused the signage to become dated. The signage contains no allowable advertising delineated in Section 9-225 of the Act and the costs were incurred solely because the Company decided to merge the legacy utilities. Ameren's customers should not be burdened with these duplicative expenses.

b. Brand Related Expenses

The Commission should accept Staff, AG/AARP, and CUB's proposed adjustment to disallow brand-related expenses associated with the Company's evaluation of its customers' ability to recognize the new Ameren name and logo following the merger of the legacy Illinois utilities. The Company stated, "These costs were incurred in an effort to assist customers in better understanding that the repercussions of the merger of the legacy utilities would not impact the performance, reliability or safety of the service they received." (AIC IB, p. 49) In other words, Ameren wants their customers to know that the service they are paying for will not be impacted by the merger. However, if the costs of these name recognition studies are passed on to customers, then the amount that the customers are paying for these services will be adversely impacted by the merger by increasing the rates charged to customers.

The Company further attempts to inappropriately shift the burden of proof to Staff and Intervenors, stating that they have not identified a prior instance where the Commission removed similar costs from AIC's revenue requirement. (AIC IB, p. 49) Lack of an adjustment in past cases, however, does not somehow transform the costs in question in this case from promotional to educational costs. The name recognition studies at issue in this case do not meet any of the allowable advertising categories delineated in Section 9-225 of the Act, and should be disallowed by the Commission.

c. E-store Costs

d. Other Account 909 Expenses

Staff proposes to disallow advertising costs for which the Company is unable to provide the adequate support necessary to justify their inclusion in rates under Section 9-225. (Staff IB, p. 20) The Company's position appears to be that it is not required to support its costs included in its proposed revenue requirement:

> Has AIC been able to show how each vendor invoice – some of which are total gas and electric costs – reconciles to the subject matter expense to the very last dollar?
>
> No. But the Commission's review of advertising expenses should not be the equivalent of a full-scale IRS audit.
>
> (AIC IB, p. 52)

This admission alone is telling. The Company goes on to misrepresent Staff's position that Section 9-226 requires a reconciliation of costs to invoice. (Ameren IB, p. 51) Staff made no such claim. Rather Staff applied the criteria of allowable advertising costs under Section 9-225 of the Act to determine if the Company's costs are just and reasonable. It is clearly unreasonable to include in rates historical costs which the Company cannot reconcile to an invoice. The burden of proof to show that these costs should be included in rates lies with the Company. 220 ILCS 5/9-201(c) The Company has not met its burden to recover increased account 909 advertising costs that are unsupported and were added after the Company provided the support for its initial claim for account 909 advertising costs. The unsupported costs should be disallowed.

3. Account 930.1 – Corporate Sponsorship

Staff, AG/AARP, and CUB propose to disallow costs associated with corporate sponsorships. (Staff IB, p. 21) The Company has said, "The primary design of corporate sponsorships is to financially support the worthwhile event itself." (AIC IB, p.

55) Providing financial support to local festivals and events may be good corporate citizenship but it does not meet the criteria established in Section 9-225 of the Act for recoverable advertising expenses and should be disallowed.

4. Regulatory Asset Amortization

5. Other

IV. REVENUES

A. Uncontested or Resolved Issues

B. Contested Issues

1. Late Payment Revenues

V. RATE OF RETURN

A. Overview

B. Uncontested or Resolved Issues

1. Rate of Return on Common Equity

C. Contested Issues

1. Year End or Average Capital Structure

Section 16-108.5(c)(2) of the Act requires that the formula rate "reflect the utility's actual capital structure for the applicable calendar year, excluding goodwill." (220 ILCS 5/16-108.5(c)(2)) AIC argues, "[a]n average capital structure is not an actual capital structure." (AIC IB, p. 62) That is patently false. In fact, the Commission's past practices and own rules recognize that the capital structure components may be measured using average balances. (83 Ill. Adm. Code 285.4000(b)) Furthermore, the statute refers to "calendar year," which the Company recognizes as the period from January 1st through December 31st. (Tr., 6/21/2012, p. 278) It is important to note that, although Section 16-108.5(c)(2) of the Act specifies that rates reflect the utility's actual capital structure for the applicable year, it does not specify a measurement methodology for capital structure. (Staff Ex. 16.0, p. 8)

The Company's claim that "Staff's approach uses 2009 data to comply with the statute's mandate that the actual 2010 capital structure be used" is absurd given that the December 31, 2009 balances used by Staff are identical to opening January 1, 2010 balances. (AIC IB, p. 62) Moreover, the Company's argument is disingenuous. As shown on Ameren Ex. 2.2 (Rev.), Workpaper 12, page 158, the Company itself used the December 31, 2009 short-term debt balance in its monthly average net short-term debt calculation. This is the methodology set forth in 83 Ill. Adm. Code 285.4000(b), which states, "[e]ach monthly average shall equal the simple average of the beginning and ending monthly balances." (83 Ill. Adm. Code 285.4000(b)) Similarly, former Section 16-111(e) of the Act required calculating an average return on equity as follows:

> …(a) If the 2-year average of an electric utility's earned rate of return on common equity, calculated as its net income applicable to common stock divided by the average of its beginning and ending balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission. (220 ILCS 5/16-111(e))

FERC Form 1 does not contain any balances that are explicitly labeled as "beginning." (*See* AIC's 2010 FERC Form 1 balance sheet, pp. 110-113) Consequently, according to the language in the statute, the General Assembly obviously recognized that an end of year balance for the prior year is synonymous with the beginning balance for the current year. Moreover, since there are 365 days between December 31, 2009 and December 31, 2010; using two year-end balances clearly results in a one-year average balance.

According to AIC:

> ...the Commission has the authority to review a utility's capital structure for prudence and reasonableness… Thus, the proposed use of an average capital structure solves a problem that does not exist, and merely introduces more complexity into the determination of the capital structure. (AIC IB, p. 62)

The Company's argument ignores the reality that assessing the prudence or reasonableness of the timing of debt and equity financing is problematic because outside parties would be hard-pressed to refute a utility assertion that the utility changed the date of a debt issuance by a few weeks or months because of capital market conditions. (Staff Ex. 16.0, p. 3) For example, despite issuing debt at possibly the worst time in October 2008, no party challenged the timing of IP's 9.75% $400 million bond issue. (Order, Docket Nos. 09-0306 et al., 4/29/2010, pp. 139-143)

In testimony, Staff illustrated how transactions as ordinary as issuing $100 million long-term debt to replace short-term debt, or conversely, using $100 million short-term debt to bridge long-term financing can affect a year-end capital structure, especially if those transactions happen towards the end of the year. (Staff Ex. 16.0, pp. 3-7)

First, Staff presented the obvious case in which a year-end capital structure is identical to an average capital structure when the month-end balances for each capital component remains constant every month for a given calendar year. (*See* Staff Ex. 16.0, pp. 3-4, Table One)

Staff's second example illustrated how refinancing $100 million of short-term debt with $100 million of long-term debt during December 2010 affects the end-of-year capital structure more than the average capital structure. Although the refinancing of short-term debt with long-term debt does not change total debt, the Company's method for measuring capital structure would incorrectly indicate that total debt had risen. (*See* Staff Ex. 16.0, pp. 4-6, Table Two)

Finally, the opposite refinancing transaction – *i.e.*, refinancing $100 million of long-term debt with $100 million of short-term debt during December 2010 – also affects the year-end capital structure more than the average capital structure. In this example, the year-end capital structure would misleadingly indicate that total debt had fallen even though refinancing long-term debt with short-term debt would not change the amount of total debt. (*See* Staff Ex. 16.0, pp. 6-7, Table Three)

Staff's proposal to use average capital structures for formula rates would not make it impossible to manipulate capital structures for ratemaking purposes; however, since the average comprises thirteen observations, any single month-end balance has less influence on the average. In other words, the manipulation of capital structure through the timing of capital issuances and retirements would have a smaller effect on a capital structure comprising average balances than a capital structure comprising single, end-of-year balances. (Staff Ex. 16.0, p. 8)

The Company asserts that use of a year-end capital structure accurately measures a company's earned rate of return on equity. (AIC IB, pp. 61-62) To the contrary, Staff explained that average capital structures would more accurately measure the Company's earned rate of return on equity than capital structures measured on a single date for reconciliation purposes. The Company proposes to calculate the rate of return on common equity for reconciliations as DS ROE = DS Net Income / DS Common Equity Balance. The numerator, "DS Net Income," represents earnings during the calendar year. In contrast, the Company's proposal would measure the denominator, "DS Common Equity Balance," at a single point in time – the last day of the calendar year. As such, the denominator would misstate the amount of common equity that the Company had invested during the twelve months over which AIC generated the net income reflected in the numerator. Moreover, Staff noted that Standard & Poor's uses average common equity in its calculation of return on common equity and financial literature recognizes that it is "common regulatory practice" to calculate a rate of return on average book equity. (Staff Ex. 16.0, pp. 8-9)

In Docket No. 11-0721, the Commonwealth Edison Company ("ComEd") formula rate proceeding, the Commission adopted an average capital structure instead of a year-end capital structure, for formula rate plans, stating:

> The Commission concludes that Staff's proposed average capital structure which will calculate the average short-term debt balance, the average balance and embedded cost of long-term debt, and the average common equity balance more accurately reflects the Company's actual capital structure. Staff's proposal is also more consistent with Commission practice and law than the actual year-end capital structure proposed by the Company. The Commission further agrees with Staff that an average capital structure for setting formula rates more accurately measures a company's earned rate of return on common equity for a calendar year and is less sensitive to manipulation than end of year measurement dates. (Order, Docket No. 11-0721, 5/29/2012, p. 123)

Ameren has offered no cogent reason the Commission should treat AIC differently than ComEd on this matter. For all the foregoing reasons, as well as those set forth in Section V.C.1. of Staff's Initial Brief, the Commission should adopt Staff's methodology for calculating an average capital structure for formula rates and reject the Company's proposal to determine formula rates using a year-end capital structure.

2. CWIP Accruing AFUDC Adjustment

The Commission's rules regarding the net short-term debt calculation, which both the Company's and Staff's capital structures employ, states, "[e]ach monthly short-term debt balance shall be reduced by an amount equal to the concurrent monthly balance of CWIP accruing AFUDC if the AFUDC rate is set in accordance with the Uniform System of the Accounts." (83 Ill. Adm. Code 285.4020(d)(1)) AIC supports removing CWIP from the short-term debt balance. (Staff Ex. 16.01, p. 10, citing Ameren Ex. 2.2 (Rev.), Workpaper 12, MFR Schedule D-2) Nevertheless, AIC argues that Staff's proposed adjustment to remove remaining CWIP from long-term capital components is without real purpose or effect; therefore, AIC does not believe there is any reason to make this adjustment. (AIC IB, p. 63) In rebuttal testimony, Staff illustrated the double counting of dollars that Staff's CWIP adjustment to long-term capital components eliminates. (*See* Staff Ex. 16.0, pp. 10-12 and Sch. 16.07) Furthermore, Staff explained that in this case, the Commission will establish a methodology for measuring capital structure in formula rate cases. Thus, the formula must include this adjustment in the event AIC uses sufficient amounts of short-term debt in future years to affect rate of return on rate base. (Staff Ex. 16.0, p. 12)

The Commission has previously determined that accepting the CWIP adjustment used to calculate the short-term debt balance but rejecting the CWIP adjustment to long-term debt and common equity, as the Company proposes to do, results in double counting capital. Specifically, the Commission has determined the following:

> A utility's approved rate of return on rate base and the authorized AFUDC rate should be calculated in a coordinated manner to avoid either over or under-recovery of the utility's financing costs. The Commission concurs with Staff that the formula for calculating the AFUDC rate assumes that CWIP is financed first with short-term debt and is then financed with the remaining sources of permanent capital in proportion to total permanent capital. The Commission finds that Staff's proposed two-part formula for calculating UE's short-term debt balance is consistent with the manner in which short-term debt is treated in calculating the AFUDC rate. This formula will include in the capital structure the portion of short-term debt that is used to finance the acquisition of assets included in rate base but not the portion assumed for ratemaking purposes to finance CWIP. (Order, Docket Nos. 02-0798, 03-0008 & 03-0009 (Cons.), 10/22/2003, p. 68)

In Docket No. 08-0363, the Commission found Staff's AFUDC formula-based adjustments to the components to the capital structure, including long-term debt and common equity, reasonable and stated:

> …the Commission finds that that the methodology employed by Staff to quantify the proportion of short-term debt that should be reflected in the capital structure is reasonable. The Commission believes that Staff's approach (which subtracts from projected monthly balances of short-term debt balances the balances of CWIP accruing AFUDC) reasonably estimates the proportion of short-term debt that Nicor uses to finance assets included in rate base…
>
> Staff proposed to adjust all of the components of its recommended capital structure to reflect the Commission's methodology for calculating CWIP-accruing AFUDC. This assumes that short-term debt is the first source of funds for financing CWIP and that any CWIP that is not funded by short-term debt is funded proportionally by the remaining sources of capital…
>
> While the parties are correct that from a practical standpoint cash is fungible, this is a ratemaking proceeding and to estimate Nicor's cost of capital as accurately as possible the Commission cannot ignore the ratemaking assumptions underlying the AFUDC formula. The AFUDC formula includes assumptions regarding how CWIP is financed. It is clear to the Commission that the ratemaking assumptions regarding how CWIP is financed impacts, for ratemaking purposes, how rate base is financed. To ignore those

> assumptions in this proceeding would run the risk of misstating the proportion of long-term capital used to finance rate base, thereby overstating or understating the cost of capital applied to rate base. While it is not necessary that the total dollars of capital contained in the capital structure match the total dollars of rate base, in estimating the rate of return, it is important that the proportion of dollars used to finance rate base be estimated as accurately as possible. The Commission concludes that, in this instance, Staff is correct that the assumptions underlying the AFUDC formula impact the proportion of dollars remaining to finance rate base. (Order, Docket No. 08-0363, 3/25/2012, pp. 49-51)

The Commission's Order for Docket No. 95-0076 (Illinois-American Water Co. proposed general increase in water rates) referred to a prior Illinois Power Company rate case in which the Commission concluded, "[s]ince the AFUDC rate is calculated on the assumption that all short-term debt is used to support CWIP not in rate base, placing it in the capital structure for the purpose of determining the rate of return to apply to rate base would constitute double counting." (Order, Docket No. 95-0076, 12/20/1995, pp. 50-51, citing Order, Docket Nos. 84-0055, 87-0695 and 88-0256 (Consol.), March 30, 1989, pp. 189-190). Given the Commission's decision in Docket No. 95-0076, either AIC is wrong when it claims that removing from the ratemaking capital structure long-term capital that has been assigned to CWIP accruing AFUDC is unnecessary or the Commission was wrong to conclude that the same AFUDC formula would result in double counting if short-term debt that has been assigned to CWIP accruing AFUDC is not removed from the ratemaking capital structure.

Finally, in the ComEd formula rate proceeding, the Commission adopted Staff's proposed CWIP accruing AFUDC adjustment to ComEd's long-term debt and equity balances, stating:

> Further, the Commission agrees with Staff that no double counting of capital occurs when the allowance for funds used during construction-related adjustments to short-term debt and long-term

> capital are either both accepted or rejected. Accepting only one of those adjustments, however, results in a mismatched capital structure measurement that only benefits the Company. (Order, Docket No. 11-0721, 5/29/2012, p. 127)

Ameren has offered no cogent reason to be treated differently than ComEd on this matter. For all the foregoing reasons, including those reasons set forth in Section V.C.2. of Staff's Initial Brief, the Commission should adopt Staff's proposed CWIP/AFUDC adjustment for formula ratemaking proceedings.

3. Common Equity Balance – Purchase Accounting

AIC asserts that Staff is challenging the Commission's decision in Docket No. 04-0294 as it pertains to the calculation of capital structure because Staff does not challenge the accuracy of AIC's calculation of purchase accounting adjustments; rather, Staff disputes how the Company's purchase accounting adjustments should be treated for the purpose of setting rates. (AIC IB, p. 72) The Company is wrong. In Docket No. 04-0294, the Commission adopted Staff's recommendation to collapse the impact of push down accounting into Account 114, plant acquisition adjustments, for all Illinois regulatory purposes, such as reporting in Form 21 ILCC annual reports. (Order, Docket No. 04-0294, 9/22/2004, pp. 33-34) Staff's adjustment, which removes all purchase accounting adjustments, including goodwill, that are included in Account 114, as well as income statement purchase accounting adjustments that are reflected in the retained earnings balance, complies with the reporting requirements set forth in the Commission's Order in Docket No. 04-0294. Although the Company's argument implies that Account 114 includes the net income-related purchase accounting adjustments that are reflected in the Company's retained earnings balance, the purchase accounting adjustments reflected in Account 114 are separate from the income statement purchase accounting adjustments. This is evident given the Uniform System of Accounts ("USOA") identifies retained earnings as Accounts 215, 215.1, and 216. (Tr., 6/21/2012, p. 280) Those accounts are not reflected on page 13 of AIC's 2010 Form 21 ILCC annual report, which summarizes the purchase accounting adjustments collapsed into Account 114. (AIC 2010 ILCC Form 21, p. 13) In summary, the Company's assertion that Staff's adjustment to remove all purchase accounting adjustments, including goodwill, "does not comport with the Docket No. 04-0294 Order because it does not remove all purchase accounting associated with Ameren's acquisition of the former Illinois Power Company" is false. (AIC IB, p. 65)

Given that the Company never included net income-related purchase accounting adjustments in Account 114, it is not clear what the Company means when it asserts Staff "is reversing the 'collapsing' of purchase accounting entries, including retained earnings balances from previous periods, without consideration of whether such earnings are still retained by the Company, and leaving the effects of the push down accounting partially in place to calculate [Staff's] proposed capital structure." (AIC IB, p. 67) The only difference between the adjustment proposed by the Company and Staff's proposed adjustment relates to whether cash dividends can effectively remove net income related purchase accounting adjustments that are separate and distinguishable from, and not included in, the purchase accounting adjustments reflected in Account 114. To summarize Staff's position, there is no financial or legal basis for the Company's argument that cash dividends can eliminate (or offset) the net income related effects of purchase accounting. (Staff IB, pp. 27-31) Consequently, the

Company's proposed adjustment effectively inflates the Company's equity balance by approximately $100 million in 2010.

AIC also errs when it alleges Staff's position in this case is the same as Staff's argument in Docket No. 11-0282. (AIC IB, p. 67) To the contrary, in Docket No. 11-0282, Staff proposed to remove the goodwill balance in lieu of AIC's purchase accounting adjustment balance to avoid including in rates any purchase accounting adjustments that are not appropriate for ratemaking purposes. (Order, Docket No. 11-0282, 1/10/2012, p. 51) The net income related adjustment to retained earnings was introduced during the evidentiary hearing in that case, when Staff discovered that in Docket Nos. 07-0585 et al., the Company made two purchase accounting adjustments to AmerenIP's common equity balance: the first adjustment subtracted $155 million of goodwill net of purchase accounting adjustments (*i.e.*, the Account 114 balance); the second adjustment subtracted $63 million of income generated from purchase accounting. In the 2011 rate case, the Company testified it would make that adjustment until the retained earnings from income generated from purchase accounting had been fully paid out as common dividends. (Order, Docket No. 11-0282, 1/10/12, p. 52) Thus, there is neither a dispute about whether the balance in Account 114 should be subtracted from the Company's balance of common equity nor the correct balance in Account 114. Any Company argument that suggests otherwise is a straw man.

Staff has explained that purchase accounting adjustments, including those to net income, do not represent either changes in cash available for investment or the generation of cash; as such, the Company cannot distribute purchase accounting net income to investors in the form of common dividends. (Staff IB, p. 28) AIC acknowledges that a Company must be in possession of cash to pay a cash dividend.

(Tr., 6/25/2012, p. 637)[3] Thus, in essence, by ignoring net income-related purchase accounting adjustments in the instant case, AIC is seeking a return on equity capital that results from the revaluation of assets or liabilities due to the application of purchase accounting rather than capital that was generated and retained by or invested in the Company.

Towards that end, the Company asserts that as of December 31, 2008, "the entire amount of purchase accounting net income that was transferred to retained earnings was paid out in cash common dividends… there was no remaining balance in retained earnings for purchase accounting." (Tr., 6/21/2012, p. 281) AIC also asserts that purchase accounting net income that was transferred to retained earnings exceeded negative $7 million at the end of 2010. (Ameren Ex. 13.0, p. 16, footnote 7; Tr., 6/21/2012, p. 282) Putting aside the fact that the Company made up the rules regarding "assigning" dividends to purchase accounting and non-purchase accounting net income as it went along (Staff Group Cross Ex. 4, pp. 7-8 (RMP 13.03 and 13.04); Tr., 6/21/2012, pp. 283-288), the Company has not explained how retained earnings resulting from purchase accounting adjustments, which the Company alleges were entirely eliminated by cash dividend payments as of December 31, 2008, could continue to accrue and results in a negative balance during 2009 and 2010.

AIC misconstrues the point of Staff's summary regarding dividend payments and equity infusions from the date Ameren Corporation acquired Illinois Power through the

[3] Company witness Martin has a Bachelor of Business Administration degree, with a concentration in Accountancy, and joined Ameren Services Company in 2007, where he was responsible for managing the Company's general and plant accounting functions, accounting research and policy. (Ameren Ex. 3.0, Appendix) Yet, during cross-examination, Mr. Martin claimed he did not know whether dividends can be paid when a retained earnings balance is negative. (Tr., 6/25/2012, pp. 638-639) In its Initial Brief, Staff noted that, contrary to the Company's testimony, the Commission and Illinois Power Company thought otherwise in Docket No. 92-0415. (Order, Docket No. 92-0415, 1993 Ill. PUC LEXIS 119, March 24, 1993)

end of year 2010. (AIC IB, p. 67-71) AIC argues, "it is impossible for AmerenIP to have paid $76 million in common dividends out of retained earnings to its parent Company without net income generated as a result of purchase accounting." (Staff Group Cross Ex. 4, p. 1 (RMP 5.05)) Yet, the Company's argument assumes that common dividends can only be assigned to the retained earnings component of common equity. While it is true that common dividends are subtracted from retained earnings, amounts can and have been transferred from retained earnings to other common stock accounts and vice versa. (Staff IB, p. 29) Further, there is no distinction between common equity components from a financial standpoint. Obviously, the balance of retained earnings does not have a distinct, different rate of return than other components of common equity. It is nothing but a contrivance of accounting when common equity flows from a parent to subsidiary are recorded in the subsidiary's paid in capital account but common equity flows from the subsidiary to the parent (*i.e.*, dividends) are recorded in the subsidiary's retained earnings account. The fact is that from the date of Ameren's acquisition of Illinois Power in October 2004 through 2010, Illinois Power has received nearly as much common equity capital from Ameren as Illinois Power has returned to Ameren (through dividends). Specifically, in 2004, Ameren Corp. infused $871 million into Illinois Power, $802 million of which the Company used to retire indebtedness, leaving an "excess infusion" of $69 million. In 2005, Illinois Power paid common dividends totaling $76 million, thereby returning the $69 million "excess infusion," with an additional $7 million to Ameren Corp. Beginning in 4th quarter 2007 through 2009, Illinois Power paid $152 million common dividends, bringing the total accumulated dividends from Illinois Power to Ameren Corp. to $159 million since the acquisition, net of the excess infusion from 2004. In 2009, Ameren Corp.'s total equity infusions to

Illinois Power Company totaled $155 million. That is, Ameren Corp. "repaid" all but $4 million of common dividend payments that Illinois Power Company made since its date of acquisition through 2009.[4] (Staff Ex. 16.0, Sch. 16.08) As shown in Ameren Ex. 13.4, non-purchase accounting net income through 2008 equaled $94.5 million, which is far more than the $4 million "net dividends" that Illinois Power paid Ameren Corp., and even more than the $67 million "net dividends", that Illinois Power paid Ameren Corp. in 2009 and 2010.

The Company also opposes Staff's adjustment by arguing that the purchase accounting related net income was necessary to pay the cash dividends since the company would be prohibited from paying any dividend in that hypothetical situation of having no retained earnings balance. (Staff Group Cross Ex. 4, p. 1 (RMP 5.05); Tr., 6/25/2012, pp. 637-639) The Company's theory that purchase accounting net income, which it admits provides no capital that can be invested in utility plant and equipment (Ameren Ex. 13.0, p. 16), would permit the utility to pay dividends that it could not otherwise lawfully pay, is far-fetched.

First, Section 7-103(2) of the Act does not draw any explicit lines. For example, the language of Section 7-103(2)(a) states that in order for a utility to pay a dividend upon its common stock and preferred stock the utility's earned surplus (*i.e.*, retained earnings) should be "sufficient" rather than "greater than zero" or "positive." The General Assembly clearly gave the Commission discretion to define "sufficient" in this context. Second, Section 7-103(2)(b) refers to the effect of a dividend payment on the

[4] Illinois Power Company used all but $69 million of the 4th quarter 2004 equity infusion to refund debt in connection with the acquisition. Adding that equity infusion to the $155 million of equity infusions during 2009 produces total equity infusions of $224 million. During the same period, Illinois Power Company paid common dividends totaling $228 million (*i.e.*, $76 million in 2005, $61 million in 2007, $60 million in 2008, and $31 million in 2009). See Staff Ex. 16.0, Sch. 16.08.

utility's duty to render reasonable and adequate service at reasonable rates. Section 7-103(2)(c) refers to the obligation to "set aside" any Commission-prescribed "depreciation annuity" or a "reasonable" depreciation annuity if the Commission has not prescribed one." Clearly, the Commission has the authority to determine to what extent a specific depreciation annuity is "reasonable." Furthermore, depreciation is an expense, not income. Thus, the statute recognizes that dividends can exceed earnings, at least from a financial standpoint (as opposed to any legal constraints the Act or, by extension the Commission, might impose). If dividends could not exceed earnings from a financial standpoint, Section 7-103(2)(c), pertaining to the depreciation annuity, would be superfluous.[5] When combined with the public interest standard set forth in the last paragraph of Section 7-103(2) and the impairment standard set forth in Section 7-103(1), it becomes clear that the General Assembly's objective was to condition dividend payments to the provision of utility service of a sufficient quality. As such, the concept that an adjustment to retained earnings that provides no capital that can be invested in utility service could make a dividend payment permissible that would otherwise not be, is dubious.

The final paragraph of Section 7-103(2), which makes it clear that dividends can be paid even when one or more of the conditions set forth in 7-103(2) are not met, is sufficient for the Commission to reject the Company's argument. That is, pursuant to Section 7-103 of the Act, the Commission has the authority to authorize the payment of

[5] It is clear that Sections 7-103(2)(a) and 7-103(2)(c) must be read together. If "sufficient" in the context of Section 7-103(2)(a) means "equal or greater than zero" then dividends cannot exceed earnings, If dividends cannot exceed earnings then dividends would never be paid from the "depreciation annuity." (Staff interprets "depreciation annuity" as the recovery of the capital invested in utility plant through the inclusion of depreciation expense in the revenue requirement.) Given that Section 7-103(2)(c) implies that a dividend <u>can</u> exceed earnings, it follows that "sufficient earnings" in the context of Section 7-103(2)(a) does not mean "equal to or greater than the dividend," which in turn implies that "sufficient earned surplus" does not mean "equal to or greater than the common dividend."

dividends even when a utility's retained earnings balance is negative. As such, the Commission need not address whether a purchase accounting adjustment can make a dividend payment permissible that would otherwise not be. Nevertheless, Staff has addressed the shortcomings in the Company's financial and legal basis for its incomplete purchase accounting balance to common equity. Moreover, Staff's adjustment in this case recognizes the Commission's determination in the prior AIC rate case, Docket No. 11-0282, that purchase accounting and goodwill are intertwined. (Order, Docket No. 11-0282, 1/10/2012, p. 54)

For all the foregoing reasons, as well as those set forth in Section V.C.3. of Staff's Initial Brief, Staff recommends the Commission adopt its proposed adjustment to remove all purchase accounting adjustments, including goodwill, from the Company's common equity balance.

4. Subsequent Discussions/Report on Capital Structure

5. Common Equity Ratio/Cap Limit

6. Balance and Embedded Cost of Long-Term Debt

The Commission should adopt Staff's recommendation to calculate an average embedded cost of long-term debt for AIC's formula rates for the reasons set forth in Section V.C.1. of Staff's Initial Brief and Reply Brief regarding the reasons an average capital structure is superior to a year-end capital structure for formula rates. The Company does not object to Staff's methodology in the event the Commission concludes an average capital structure should be used, excepting Staff's proposed

CWIP/AFUDC adjustment. (AIC IB, p. 77) Staff has explained why the CWIP/AFUDC adjustment is necessary in Section V.C.2. of the Staff's Initial Brief and Reply Brief. In ComEd's formula rate proceeding, the Commission adopted Staff's average embedded cost of long-term debt calculation, stating, "[t]he Commission accepts Staff's proposed adjustment to ComEd's cost of long-term debt for the same reasons it accepts Staff's proposal to use an average capital structure," including Staff's proposed CWIP/AFUDC adjustment. (Order, Docket No. 11-0721, 5/29/2012, p. 138) For all the foregoing reasons, the Commission should adopt Staff's calculation of AIC's balance and embedded cost of long-term debt, including removal of the portion of long-term debt that is included in the AFUDC rate.

7. Balance and Embedded Cost of Preferred Stock

Staff has explained why the Commission should adopt Staff's recommendation to calculate an average embedded cost of preferred stock for AIC's formula rates for the reasons set forth in Section V.C.1. of Staff's Initial Brief and Reply Brief regarding the reasons an average capital structure is superior to a year-end capital structure for formula rates. The Company does not object to Staff's methodology in the event the Commission concludes an average capital structure should be used. (AIC IB, p. 77) Therefore, the Commission should adopt Staff's calculation of AIC's balance and embedded cost of preferred stock, including removal of the portion of preferred stock that is included in the AFUDC rate.

8. Cost of Short-Term Debt, including Cost of Credit Facilities

To support its assertion that Staff's adjustment to upfront credit facilities fees is not warranted AIC argues:

> AIC paid an upfront fee equivalent of 66.5 basis points, a fee comparable to other Illinois utilities with similar credit ratings. For example, ComEd paid a fee of 60.5 basis points, and Peoples Gas and its affiliates paid fees in an approximate range of 65-75 basis points.
>
> Nonetheless, Staff continues to sponsor an adjustment that provides recovery well below actual costs and below the costs paid by other utilities, by reducing the credit facilities fees adder to the WACC by over 20%. Given that Staff's adjustment is intended to remove any financial impacts associated with unregulated affiliates, pursuant to 220 ILCS 5/9-230, the Company requests that the Commission afford a degree of proportionality and use ComEd's fee equivalent of 60.5 basis points as a proxy in lieu of Staff's proposed adjustment. (AIC IB, p. 78)

In the Company's last rate case, Docket No. 11-0282, the Commission adopted Staff's recommendation regarding credit facility fees after AIC presented the same comparison between the AIC upfront fees and the fees paid by ComEd and Peoples Gas. (Order, Docket No. 11-0282, 5/29/2012, p. 57 and 63) The Company has yet to acknowledge the fact that whether the Company's fees are reasonable in comparison to the fees other companies pay to obtain a credit facility is irrelevant because Section 9-230 adjustments are not based on the reasonableness standard. Rather, Section 9-230 of the Act prohibits incremental costs resulting from non-utility affiliates, regardless of whether a "market-based analysis" suggests those costs are reasonable. (Order, Docket No. 11-0282, 5/29/2012, pp. 62-63)

In its brief, the Company proposes the Commission use ComEd's fee equivalent of 60.5 basis points as a proxy in lieu of Staff's proposed adjustment. (AIC IB, p. 78) Using a proxy credit facility cost in lieu of AIC's actual costs, as adjusted to remove the effects of non-utility affiliates pursuant to Section 9-230 of the Act, would not be permissible formula ratemaking for two reasons. First, using ComEd's cost instead of AIC's cost would fail to remove every iota of incremental costs resulting from AIC's non-utility affiliates. Second, formula ratemaking is based on actual costs, before required ratemaking adjustments. Therefore, the Commission should reject the Company's alternative credit facility cost proposal and adopt Staff's recommendation as it did in Docket No. 11-0282. (Order, Docket No. 11-0282, 5/29/2012, p. 63)

The determination of cost of short-term debt remains a contested issue only to the extent the Company has no short-term borrowings in a year. AIC states:

> The Company also believes, however, if the Company has no short-term borrowings in a year, the short-term debt rate used for ratemaking purposes should not be the cost of short-term debt on the Form 10-K, which in that instance would be an Ameren consolidated value, and which might not be appropriate for ratemaking purposes. Where there are no short-term borrowings in a year, the Company proposed to use the cost of short-term debt in its current credit facility, which is LIBOR plus 205 basis points. (AIC IB, pp. 78-79)

This proposal is puzzling because the Company has not described any instance in which a short-term debt cost would be needed if its balance of short-term debt is zero. Staff disagrees with the Company's position for the reasons set forth in Section V.C.8. Staff's Initial Brief. In Staff's view, and as the Company appears to agree,[6] the cost of short-term debt should be zero whenever the short-term debt balance for a given calendar year is zero and if there is short-term debt outstanding in a year, then the cost of short-term debt calculation should begin with the actual cost for AIC, as set forth in the Company's Form 10-K. (Staff IB, p. 37; AIC IB, p. 78)

[6] The Company used a zero cost of short-term debt in their direct case. (Ameren Ex. 2.1, p. 30 (App 12), line 3)

9. Other

VI. REVENUE REQUIREMENT

VII. COST OF SERVICE AND RATE DESIGN

A. Resolved Issues

1. Standard of Review for Rate MAP-P Class Cost Allocation and Rate Design

2. ECOSS Class Cost Allocation

3. Class Revenue Allocation

4. Rate Design

5. Section 16-108.5(c)(4) Protocols – Weather Normalization and Common Costs

B. Contested Issues

VIII. FORMULA RATE TARIFF

A. Uncontested or Resolved Formula/Tariff/Filing Issues

1. Uncollectibles Expense – Reconciliation in Rider EUA

2. Interest Rate Formula for Reconciliation Computation

3. Miscellaneous Staff/AIC Agreed-Upon Tariff Language Changes

Given that Section 16-108.5 provides a new regulatory framework for the purpose of setting rates, and given that this proceeding will establish precedent going forward, Staff continues to recommend that the Commission utilize a consistent approach to review tariff submissions. (Staff Ex. 4.0, pp. 4-5) In its Initial Brief Staff suggested that AIC's submitted tariffs be revised in two instances where AIC could have provided additional detail regarding termination terms and conditions of Rate MAP-P, similar to the level of detail found in ComEd's Delivery Service Pricing and Performance ("DSPP") tariff filing. (Staff Ex. 4.0, p. 2) (Staff IB, pp. 44-46) AIC witness Robert J. Mill indicated that AIC's Rate MAP-P compliance tariff would reflect Staff's requested language in both cases. (Ameren Ex. 12.0, p. 11) Despite Mr. Mill's statement in rebuttal testimony, it is not clear from the Company's IB that the tariff has been or will be revised to reflect this recommendation. AIC states that, "various agreed upon changes to the tariff language are listed in Ameren Exhibits 12.1, 13.1 and 23.1" (Ameren IB, pp. 80-81) but none of these Exhibits currently reflects the Staff recommended language on termination terms and conditions. Although this omission may have been unintentional, for the purpose of administrative ease and to avoid any future confusion, Staff would recommend that Exhibit 12.1 be revised to reflect this additional language.

4. Period of Time for Filing Compliance Formula Tariff with ICC

B. Contested Formula/Tariff/Filing Issues

1. Incentive Compensation – Stated Level/Test of Reasonableness

2. Incentive Compensation – Metrics/Requirements

3. Affiliate Service Charges – Stated Level/Test of Reasonableness

4. Rate Case Expense – Stated Level/Test of Reasonableness

5. Schedules to be Included in Rate MAP-P/Tariff Complexity

6. Filing of Final Approved Formula Template/Schedules with ICC

7. Rulemaking – Formula Rate Process

8. Other

C. Contested Reconciliation Issues

1. Year End or Average Rate Base

Staff affirms its recommendation that the Commission adopt the Intervenor and Staff proposals to use average rate base in determining the actual revenue requirement for a calendar year in the annual reconciliation as provided for in subsections 16-108.5(c)(6) and 16-108.5(d)(1) of the Act. (Staff IB, pp. 55-57) Staff has acknowledged that this is still at issue in the rehearing phase of the ComEd proceeding; however, until such time that the Commission issues a Final Order on rehearing, the Commission conclusions remain in effect and should be consistently applied in this similar proceeding. (*Id.*)

2. Interest Rate on Under/Over Collections

Staff affirms its recommendation that the Commission order on this issue be consistent with the ComEd order. (Staff IB, pp. 57-58) Staff has acknowledged that this is still at issue in the rehearing phase of the ComEd proceeding; however, until such time that the Commission issues a Final Order on rehearing, the Commission conclusions remain in effect and should be consistently applied in this similar proceeding. (*Id.*)

3. Other

D. Other Legal Issues

1. CUB's Additional Steps for Commission Review of Project Costs

IX. OTHER

A. Resolved or Uncontested Issues

1. Original Cost Determination

2. Uncollectibles Expense – Net Write Off in Rider EUA

3. Net Plant Allocator

4. Depreciation Study

5. Rate Case Expense – Section 9-229 Statement

B. Contested Issues

1. Income Taxes – Interest Synchronization

2. Gross Revenue Conversion Factor

X. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding the Company's tariffs and charges submitted pursuant to Section 16-108.5 of the Public Utilities Act.

July 25, 2012

Respectfully submitted,

JAMES V. OLIVERO
MICHAEL J. LANNON
NICOLE T. LUCKEY
MATTHEW L. HARVEY
Staff Counsel

JAMES V. OLIVERO
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: (217) 785-3808
jolivero@icc.illinois.gov

MICHAEL J. LANNON
NICOLE T. LUCKEY
MATTHEW L. HARVEY
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle St., Suite C-800
Chicago, IL 60601
Phone: (312) 792-2877
mlannon@icc.illinois.gov
nluckey@icc.illinois.gov
mharvey@icc.illinois.gov